



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2013

Mr. Steven E. Meyer
Assistant City Attorney
City of Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2013-17206

Dear Mr. Meyer

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 501083 (PD Ref. No. 12096).

The Arlington Police Department (the "department") received a request for information regarding incidents in which officers were suspected of being distracted while driving. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Gov't Code § 552.101. Section 552.101 encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). The requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor . . . maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques but was not applicable to generally known policies and procedures. *See* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution); *compare* Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You contend release of the information in Exhibit D could compromise the safety of police officers. You inform us Exhibit D contains information which reveals an officer’s schedule, hours of employment, and regular days off. Based on your representations and our review, we conclude the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate how the release of any of the remaining information would interfere with law enforcement, and the department may not withhold any of the remaining information on this basis.

Section 552.102 of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”² Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts*

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

v. Attorney Gen. of Tex., 354 S.W.3d 336 (Tex. 2010). Upon review, we find the department must withhold the birth date of the department employee we have marked under section 552.102 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Act of May 26, 2013, 83rd Leg., R.S., H.B. 1632, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" Gov't Code § 552.1175(a)(1). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). You assert the submitted information contains the cellular telephone number of a peace officer who has elected to restrict access to such information in accordance with section 552.1175(b). Accordingly, the cellular telephone number we have marked must be withheld from disclosure under section 552.1175 of the Government Code if a governmental body does not pay for the cellular telephone service.³

Section 552.130(a)(2) of the Government Code provides that information relating to a motor vehicle title or registration issued by an agency of this state, or another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). The department must withhold the motor vehicle record information we have marked under section 552.130(a)(2) of the Government Code.⁴ However, upon review, we find none of the remaining information consists of motor vehicle record information subject to section 552.130. Accordingly, none of the remaining information may be withheld on that basis.

In summary, the department must withhold the submitted CR-3 accident reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The department may withhold the

³Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See* Act of May 26, 2013, 83rd Leg., R.S., H.B. 1632, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)).

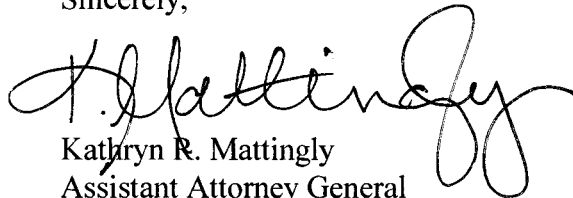
⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

information we have marked under section 552.108(b)(1) of the Government Code. The department must withhold (1) the birth date of the department employee we have marked under section 552.102 of the Government Code, (2) the cellular telephone number we have marked under section 552.1175 of the Government Code if a governmental body does not pay for the cellular telephone service, and (3) the motor vehicle record information we have marked under section 552.130(a)(2) of the Government Code. The department must release the remaining information to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/tch

Ref: ID# 501083

Enc. Submitted documents

c: Requestor
(w/o enclosures)